

State of Missouri

Office of Secretary of State

Case No. AP-07-16

IN THE MATTER OF:

UBS FINANCIAL SERVICES, INC., CRD 8174

Respondent.

CONSENT ORDER

I. SUMMARY OF ALLEGATIONS

1. The Enforcement Section of the Missouri Securities Division alleges that during the period from January 1999 to May 2001, UBS Financial Services Inc. ("UBS" or "Respondent") failed to supervise Christopher L. Walker ("Walker") and William T. Keen ("Keen"). Walker and Keen, through a series of seminars and meetings, convinced several Missouri residents that they could match or even exceed the customer's current salary by retiring and investing their retirement funds with Walker and Keen. Walker and Keen implemented an investment strategy for these and other retired customers which placed the customers' funds in unsuitably aggressive investments. Losses in the customers' accounts forced some of these customers to return to work. When losses in the accounts resulted in customer dissatisfaction, Walker and Keen recommended that their customers sell securities in the wrap accounts and purchase B share mutual funds. The Division alleges that the Respondent failed to reasonably supervise Walker and Keen and that this constitutes grounds to revoke Respondent's registration in Missouri pursuant to Section 409.204, RSMo. (2000).
2. Respondent and the Securities Division desire to settle the allegations and the matters raised by the Securities Division relating to Respondent's alleged failure to supervise Walker and Keen as set forth in this Consent. The Division acknowledges that UBS cooperated in this investigation.

II. CONSENT TO JURISDICTION

3. Respondent and the Securities Division stipulate and agree that the Commissioner has jurisdiction over the Respondent and these matters pursuant to Chapter 409, et seq, RSMo. (2000).
4. Respondent and the Securities Division stipulate and agree that the Commissioner has authority to enter this Consent Order pursuant to Sections 409.407 and 409.408, RSMo. (2000).

III. WAIVER AND EXCEPTION

5. Respondent waives its right to a hearing with respect to this matter.
6. Respondent waives any rights that it may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Order. Respondent specifically forever releases and holds harmless the Missouri Office of Secretary of State, Secretary of State, Commissioner of Securities and their respective representatives and agents from any and all liability and claims arising out of, pertaining to or relating to this matter.

IV. CONSENT TO COMMISSIONER'S ORDER

7. Respondent and the Securities Division stipulate and agree to the issuance of this Consent Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein.
8. Respondent neither admits nor denies the allegations made by the Securities Division but consents to the Commissioner's Findings of Fact or Conclusions of Law as set forth below solely for the purposes of this proceeding and any proceeding that may be brought to enforce the terms of this Consent Order.
9. Respondent agrees not to take any action or to make or permit to be made any public statement creating the impression that this Order is without a factual basis. Nothing in this paragraph affects Respondent's (a) testimonial obligations; or (b) right to take legal or factual position in defense of litigation or in defense of other legal proceedings in which the Commissioner of Securities is not a party; or (c) right to make public statements that are factual.
10. Respondent agrees that Respondent is not the prevailing party in this action since the parties have reached a good faith settlement.

COMMISSIONER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER

I. FINDINGS OF FACT

11. UBS became registered in Missouri as a broker-dealer on March 1, 1967. UBS has a CRD number of 8174, and its principal place of business is located at 1200 Harbor Boulevard, Weehawken New Jersey 07086.
12. Walker, CRD #2466629, became registered in Missouri as a securities agent with PaineWebber, Inc. on March 12, 1998. During the time Walker was registered with PaineWebber, Inc., the firm merged with UBS and became known as UBS PaineWebber Inc. ("UBS/PW"). The firm is currently known as UBS.
13. Walker maintained his agent registration in Missouri through May 24, 2001, when that registration was terminated by UBS. Walker is currently registered as a securities agent of Wachovia Securities, LLC ("Wachovia").
14. Keen, CRD #2212517, became registered in Missouri as a securities agent with PaineWebber, Inc. on February 13, 1998. Keen maintained his agent registration in Missouri through May 24, 2001, when that registration was terminated by UBS/PW.

Keen is currently registered in Missouri as a securities agent of Wachovia.

15. Walker and Keen presented a series of seminars to individuals who were close to retirement. They focused attention on individuals in mid-level management of large companies. One of the topics at these seminars was: "Do you have enough money to retire?"
16. Walker and Keen advocated a "low turnover buy-and-hold investment philosophy." Their investment philosophy consisted of investing in a wide range of equities. Walker and Keen claimed that the diversification across equity classes provided balance against market movements in their customers' portfolios.
17. To implement this strategy Walker and Keen used the PaineWebber Research Department, specifically the PaineWebber highlighted stocks list, which subsequently became the UBS's list of "Highlighted Stocks". Walker and Keen purchased stocks on the list that were "buy" or "attractive."

A. Walker and Keen Seminars

18. Walker and Keen were able to accumulate more than \$100 million in assets under management (they raised \$50 million in new assets in a two year period) in large part due to seminars to which prospective clients were invited. In these seminars and/or in documents provided to investors, which were not submitted to Respondent for review as was required by Respondent's policies, Walker and Keen:
 - a. explained their philosophy by stating that generally people should own as close to 100% equities as they can emotionally stand, and that after retirement they should still own as close to 100% equities as they can emotionally stand;
 - b. stressed that investors could trust and rely on Walker and Keen's financial acumen;
 - c. stressed that investors could turn their financial concerns over to Walker and Keen and not have to worry anymore; and
 - d. sought to reduce investor concerns with the strategy of investing only in equities by stating, in effect, that volatility would not prevent customers from making money as long as they did not panic and held their equity positions for the long term.
19. In materials approved by UBS, Walker and Keen provided materials to investors that stated:
 - a. "We process the experience which most people describe as a 'bear market' in two different words: big sale;"
 - b. "The fundamental risk is not losing one's money, but outliving it;" and
 - c. "We are not afraid of being the next 25% downtick. We are afraid of missing the next 100% uptick."

20. In interviews with a representative of the Securities Division, certain Missouri residents who attended these seminars stated, among other things, that:
- a. Walker and Keen were upbeat and confident. Walker and Keen explained that, even if there was a downside, the investor could recover;
 - b. The presentation was grandiose and flash and dash, as Walker and Keen took turns talking things up;
 - c. The seminar left one investor with the impression that the sky was the limit as to what the investor could make;
 - d. One attendee stated that people who are unsure of themselves and not very knowledgeable could be swayed by the performance projections given by Walker and Keen; and
 - e. Walker and Keen could invest currently-employed attendees' money so that between the returns they'd receive on their investments and their pensions, they could match their current salaries.
21. There was no indication that anyone from UBS other than Walker and Keen was present at these seminars when these topics were presented.

***B. Highlighted Stocks and Purchases of
Class B Share Mutual Funds***

22. Walker and Keen told the Securities Division that in early 2001, because of changes in the Highlighted Stocks, losses in customer accounts, and the concerns from customers on the fees on these accounts, Walker and Keen recommended that their customers sell stocks in their portfolios, terminate the wrap-fee account and purchase, among other things, class B share mutual funds through Federated Investors, Inc. ("Federated").
23. During this time, Walker and Keen customers effected over 300 transactions from these wrap-fee accounts to class B mutual fund shares of Federated. Purchasers of these class B mutual fund shares do not pay up front commissions but pay higher commissions for the agent and have higher internal expenses and a contingent deferred sales charge if the customer sells the shares within 5-7 years. In addition, purchasers of B shares receive no break-point discounts for large purchases. Walker stated that he made the recommendation to purchase B shares so that he could be "fairly compensated" for his work.
24. In May 2001, Walker and Keen left UBS and went to the firm now known as Wachovia.
25. During this period UBS settled with at least eight of Walker and Keen's customers who had invested in Federated mutual funds. Settlements involved reversing the mutual fund purchases, reinstating securities positions, crediting back charges and fees involved in the transactions, and the payment of settlements for damages. The settlements amounted to at least one hundred and sixty-seven thousand seven hundred and ninety-nine dollars (\$167,799.00) which does not include costs incurred by UBS

in reinstating positions.

26. Subsequently UBS made substantial enhancements to its Policies and Procedures.

C. Missouri Investors

27. From at least 1999 until early 2001, Walker and Keen:

- a. convinced Missouri residents that they could retire early from their employment based on projected investment returns that would allow the investors to receive an income for the rest of their lives;
- b. failed to consider that some customers would need to have access to monthly withdrawals for their living expenses;
- c. did not consider the difficulty customers would have in replacing the income they were receiving prior to retirement if they were forced to return to work should the investment strategy fail;
- d. failed to stress the possibility that the returns could be lower than projected and the impact these lower returns would have on retirees and their ability to maintain their standard of living in their retirement;
- e. based investment decisions on the amount of money customers wanted to draw from their accounts each month during their retirement, rather than basing investment decisions on:
 - i. the amount of retirement funds available to each particular customer;
 - ii. the realistic returns possible on a conservative investment strategy suitable for retirees;
 - iii. a consideration of the effects of monthly distributions during periods of market decline on customers' account values;
- f. recommended retirees make unsuitable investments in an attempt to maintain high projected returns without regard for the appropriateness of the investments for retirees reliant on a consistent income flow;
- g. failed to ensure that new account information reflected accurate information about individual customers:
 - i. most of Walker and Keen's retired Missouri customers were listed as having an investment objective of "Capital Appreciation" with a risk tolerance of "Aggressive/Speculative," even though many of them were reliant on the money entrusted to Walker and Keen and could not afford to lose their investment;
 - ii. some customers completed their new account forms based on the advice of Walker and Keen because the customers did not understand the terminology contained in those forms;

- h. utilized seminars to sell their investment strategy to potential retirees, but failed to submit all required seminar materials to UBS/PW for approval prior to their use or to retain seminar lists to provide to UBS/PW; and
 - i. recommended that customers in these wrap-fee accounts sell securities in the wrap accounts, terminate the wrap account and purchase B share mutual funds so that Walker and Keen could continue receiving compensation for their services.
28. In its supervision of Walker and Keen, UBS failed to identify and follow up on the following “red flags:”
- a. that despite the availability of information relating to Walker and Keen’s business practices, UBS did not ensure that Walker and Keen were providing seminar materials for supervisory approval. The September 2000 issue of the trade publication entitled *Research*, included an article describing Walker and Keen’s “heavy seminar schedule;”
 - b. that at least 70% of Walker and Keen’s Missouri customer accounts whose owners were listed as “Retired,” had an investment objective of “Aggressive/Speculative;” and
 - c. Other account information indicating that the Walker and Keen strategies might not be appropriate for certain customers.
29. The Securities Division alleges that the Respondent failed to reasonably supervise Walker and Keen, who the Securities Division alleges engaged in dishonest or unethical practices under Missouri 15 CSR 30-51.170. The Securities Division alleges that this failure to reasonably supervise Walker and Keen constitutes grounds to suspend or revoke the registration of UBS in Missouri pursuant to Section 409.204(a)(2)(J), RSMo. (2000).

II. CONCLUSIONS OF LAW

30. The Commissioner, after consideration of the stipulations set forth above and on the consent of Respondent and the Securities Division, finds and concludes that the Commissioner has jurisdiction over this Respondent and this matter and that the following Order is in the public interest, necessary for the protection of public investors and consistent with the purposes intended by Chapter 409 RSMo. (2000).

ORDER

NOW, THEREFORE, it is hereby ordered that:

- 1. UBS is hereby CENSURED;
- 2. UBS shall pay to the Missouri Secretary of State’s Investor Restitution Fund the sum of two hundred forty-seven thousand, six hundred eighty dollars (\$247,680.00), immediately upon the effective date of this Order. This amount shall be sent to the Securities Division and the Division will send the money to the Missouri Secretary of State’s Investor Restitution Fund and will be paid to the investors listed and in the

amounts as identified in Exhibit 1;

3. UBS shall disgorge commissions received for the purchases of B share mutual funds made by Walker and/or Keen from January 2001 until their termination from UBS in the amount of one hundred thirty-five thousand, nine hundred and forty-six dollars (\$135,946.00). These funds shall be sent to the Securities Division and the Division will send the money to the Missouri Secretary of State's Investor Restitution Fund and will be paid to the investors listed and in the amounts as identified in Exhibit 2;
4. UBS is ordered to pay a civil penalty of seventy-five thousand dollars (\$75,000.00) made payable to the State of Missouri, and delivered to the Securities Division, and the Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri. This amount shall be due and payable within ten (10) business days from the date the Consent Order is executed;
5. UBS is ordered to pay to the Investor Education and Protection Fund the sum of two hundred and thirty thousand dollars (\$230,000.00) made payable to the State of Missouri, and the Secretary of State shall forward these funds to the Investor Education and Protection Fund. This amount shall be due and payable within ten (10) business days from the date the Consent Order is executed;
6. UBS is ordered to pay eight thousand, five hundred eighty-four dollars (\$8,584.00) as the cost of this investigation. This amount shall be payable to the Missouri Secretary of State's Investor Education and Protection Fund. This amount shall be submitted to the Securities Division at 600 W. Main Street, Jefferson City, Missouri 65101 and shall be due and payable within ten (10) business days from the date the Consent Order is executed;
7. UBS shall pay their own costs and attorneys fees with respect to this matter; and
8. This Order is not intended by the Commissioner of Securities to subject Respondent or any of its officers, directors, affiliates, current or former employees or other persons who would otherwise be disqualified as a result of this Order, to any disqualifications under the laws of any state, the District of Columbia or any U.S. commonwealth or territory ("Jurisdiction"), including, without limitation, any disqualifications from relying upon any Jurisdiction's registration exemptions or any Jurisdiction's safe harbor or similar provisions.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,
MISSOURI THIS 3RD DAY OF DECEMBER, 2007.

ROBIN CARNAHAN
SECRETARY OF STATE

(Signed/Sealed)
MATTHEW D. KITZI
COMMISSIONER OF SECURITIES

Consented to by:

Mary S. Hosmer
Assistant Commissioner of Securities
Missouri Securities Division

UBS Financial Services, Inc.

Approved as to Form

John R. Short
Attorney for Respondent